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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICK CARIOU,

Plaintiff,

-against-

RICHARD PRINCE, GAGOSIAN GALLERY, INC.,
LAWRENCE GAGOSIAN, and RIZZOLI
INTERNATIONAL PUBLICATIONS, INC.,

Defendants.

-----X
No. 08-CV-4046 (JSR)

**AFFIDAVIT OF
HOLLIS GONERKA BART IN
SUPPORT OF DEFENDANTS'
RICHARD PRICE, GAGOSIAN
GALLERY, INC. AND
LAWRENCE GAGOSIAN'S
JOINT MOTION FOR
SUMMARY JUDGMENT**

STATE OF NEW YORK)
COUNTY OF NEW YORK)
)
)
)

Hollis Gonerka Bart, being duly sworn, deposes and says:

1. I am a member of the bar of the state of New York and of this Court and a member of the law firm of Withers Bergman LLP, attorney for defendants Gagosian Gallery, Inc. and Lawrence Gagosian (collectively "Gagosian"), and I submit this affidavit on behalf of Gagosian and Richard Prince in support of Defendants' Joint Motion for Summary judgment to place before the Court true and correct copies of documents and testimony adduced in discovery, or publicly available documents.

2. Annexed hereto as Exhibit A is a true and correct copy of The Tate Collection's Glossary defining the term appropriation art. *See* <http://www.tate.org.uk/collections/glossary/definition.jsp?entryId=23> (last visited Apr. 15, 2010).

3. Annexed hereto as Exhibit B is a true and correct of The Tate Collection's Glossary defining the term collage. *See* <http://www.tate.org.uk/collections/glossary/definition.jsp?entryId=70> (last visited Apr. 23, 2010).

4. Annexed hereto as Exhibit C is a true and correct copy of The Tate Collection's information on Marcel Duchamp's *Fountain*, 1917. *See* <http://www.tate.org.uk/servlet/ViewWork?workid=26850> (last visited Apr. 23, 2010).

5. Annexed hereto as Exhibit D is a true and correct copy of MOMA, The Collection's, information on Andy Warhol's *Gold Marilyn Monroe*, 1962. *See* http://www.moma.org/collection/browse_results.php?criteria=O%3AAD%3AE%3A6246&page_number=29&template_id=1&sort_order=1 (last visited Apr. 23, 2010).

6. Annexed hereto as Exhibit E is a true and correct copy of plaintiff's Amended Complaint, dated January 14, 2009.

7. Annexed hereto as Exhibit F is a true and correct copy of Guggenheim Press Release entitled "Richard Prince: Spiritual America Opens at The Guggenheim Museum September 28." *See* <http://www.guggenheim.org/new-york/press-room/press-releases/press-release-archive/2007/552-richard-prince-spiritual-america-opens-at-the-guggenheim-september-28>, Sept. 21, 2007.

8. Annexed hereto as Exhibit G is a true and correct copy of relevant excerpts from the deposition of Richard Prince, taken on January 12, 2010, together with his signed errata sheet.

9. Annexed hereto as Exhibit H is a true and correct copy of Artnet's listing for Richard Prince works available for sale. *See* <http://www.artnet.com/artist/13785/richard-prince.html>); (last visited May 5, 2010).

10. Annexed hereto as Exhibit I is a true and correct copy of the article from [artcritical.com](http://www.artcritical.com/appel/BAPrinceRecord.htm), which is entitled "Eighteen Experts Talk With Brian Appel on the \$1,248,000 Richard Prince Photograph that Has Set a New World Auction Record for Photography." *See* <http://www.artcritical.com/appel/BAPrinceRecord.htm>, Dec. 2005.

11. Annexed hereto as Exhibit J is a true and correct copy of an article from ArtDaily which is entitled "Sotheby's July 2008 Contemporary Art Evening Sale Triumphs." *See* http://www.artdaily.com/index.asp?int_sec=2&int_new=24974, Jul. 2, 2008.

12. Annexed hereto as Exhibit K is a true and correct copy of an except from Trust & Estates, August 2008 Table of Contents, which details the sale price of Richard Prince's "Overseas Nurse." *See* http://trustsandestates.com/toc/toc_080108/, Aug. 14, 2008.

13. Annexed hereto as Exhibit L is a true and correct copy of relevant excerpts from the deposition of Lawrence Gagosian, taken on October 8, 2009, together with his signed errata sheet.

14. Annexed hereto as Exhibit M is a true and correct copy of Richard Prince's book *Canal Zone*, also referred to as "The Catalogue," which is being provided to the Court only, as counsel for Patrick Cariou has previously obtained his own copy of this book.

15. Annexed hereto as Exhibit N is a true and correct copy of the Stipulation, with its corresponding exhibit, entered into on January 25, 2010 between plaintiff and the Gagosian

Gallery which authenticates certain documents and details the economic gains derived by the Gagosian Gallery and Richard Prince from the Canal Zone Paintings

16. Annexed hereto as Exhibit O is a true and correct copy of GGP0043144, the Gagosian Gallery General Ledger for the period from October 1, 2008 to June 30, 2009.

17. Annexed hereto as Exhibit P is a true and correct copy of GG0071-79, which are advertisements for the Canal Zone exhibition.

18. Annexed hereto as Exhibit Q is a true and correct copy of RP00051-58, which is the guest list for the November 8, 2008 dinner held at the Gramercy Park Hotel for Richard Prince.

19. Annexed hereto as Exhibit R is a true and correct copy of relevant excerpts from the deposition of Anthony Petrillose, the Managing Editor of Rizzoli International, taken on October 23, 2009.

20. Annexed hereto as Exhibit S is a true and correct copy of the Stipulation and Order of Dismissal, entered into between plaintiff and Rizzoli International Publications, Inc., and entered by the Court on February 5, 2010.

21. Annexed hereto as Exhibit T is a true and correct copy of the Stipulation entered into between Gagosian and powerHouse Cultural Entertainment, Inc., dated February 1, 2010.

22. Annexed hereto as Exhibit U is a true and correct copy of relevant excerpts from the deposition of Patrick Cariou, taken on January 12, 2010, together with his signed errata sheet.

23. Annexed hereto as Exhibit V is a true and correct copy of plaintiff Patrick Cariou's Answers and Objections to Defendants Gagosian Gallery, Inc. and Lawrence Gagosian's Interrogatories, dated October 5, 2009.

24. Annexed hereto as Exhibit W is a true and correct copy of PH0002, powerHouse's press release announcing the publication of *Yes Rasta*, and categorizing the book as "Photography/Reggae Culture."

25. Annexed hereto as Exhibit X is a true and correct copy of GG004340-43143, a print-out of plaintiff's website which was admitted during his deposition.

26. Annexed hereto as Exhibit Y is a true and correct copy of relevant excerpts from the deposition of Christiane Celle, taken on January 26, 2010.

27. Annexed hereto as Exhibit Z is a true and correct copy of Daniel Brooks' February 8, 2010 letter to Judge Batts.

28. Annexed hereto as Exhibit AA is a true and correct copy of GGP003115 - 16, which is the inside jacket cover of *Yes Rasta*.

29. Annexed hereto as Exhibit BB is a true and correct copy of the definition of appropriation art from ArtLex. *See* <http://www.artlex.com/ArtLex/a/appropriation.html>, last accessed May 14, 2010.

30. Annexed hereto as Exhibit CC is a composite exhibit containing true and correct copies of images of Rastafarians, tropical landscapes and marijuana plantations which can be found on the Internet.

31. Annexed hereto as Exhibit DD is a true and correct copy of the Certificate of Copyright Registration for the book entitled, *Yes Rasta* (CC0001-2).

32. Annexed hereto as Exhibit EE is a true and correct photocopy of the original of Patrick Cariou's book entitled *Yes Rasta* that was marked as an exhibit during his deposition taken on January 12, 2010.

Dated: New York, New York
May 14, 2010

Hollis Gonerka Bart
HOLLIS GONERKA BART

Subscribed to and sworn to before me this 14th day of May, 2010

Alyssa Koerner
NOTARY PUBLIC

ALYSSA KOERNER
Notary Public, State of New York
No. 02BE6123029
Qualified in New York County
Commission Expires February 28, 2012